

APPEAL NO. 040026  
FILED FEBRUARY 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 24, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, September 24 through December 23, 2003. The claimant appeals, asserting that other records do not show that the claimant can work and that she has provided a sufficient narrative. The respondent (carrier) responds, urging that the claimant's appeal is untimely, and, in the alternative, that the hearing officer's decision should be affirmed.

DECISION

Affirmed.

The carrier contends that the claimant's appeal is untimely. In that regard, Section 410.202(a) of the Act provides that, "to appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Effective for an appeal in a workers' compensation proceeding filed on or after June 17, 2001, Section 410.202(d) provides that, "Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed." Records of the Texas Workers' Compensation Commission (Commission) indicate that the decision of the hearing officer was distributed on December 2, 2003. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the decision on December 7, 2003, and was therefore required to file her appeal by December 31, 2003, for the appeal to be timely. The carrier is incorrect in its assertion that the claimant was required to file her appeal by December 23, 2003. The claimant's appeal has a barely legible postmark, which we read as December 29, 2003, and which is definitely within the time limit for a timely appeal. The appeal was received by the Commission on January 2, 2004, as evidenced by the Commission's date stamp on the envelope. Thus, the claimant timely filed her appeal. See Rule 143.3(c). The assertion of untimeliness is without merit.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the first quarter. The claimant claimed that she had no ability to work during the qualifying period and it is undisputed that she did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to

work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The claimant appeals the hearing officer's finding that she did not provide a narrative report from a doctor which specifically explains how the injury caused a total inability to work and that other records showed that the claimant was able to work. We conclude that the appealed finding, and the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Having found that the claimant failed to provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, the hearing officer's finding that the claimant was not able to perform any type of work in any capacity during the qualifying period for the first quarter is untenable. However, the hearing officer did not err in determining that the claimant is not entitled to SIBs for the first quarter based on the appealed finding. See Texas Workers' Compensation Commission Appeal No. 021053, decided June 6, 2002.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge